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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Vladimir Fuflyigin

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4241

26161

7590

06/14/2005

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

EXAMINER

WONG, ERIC K

ART UNIT

PAPER NUMBER

2883

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-36, drawn to a waveguide with a particular composition, classified in class 385, subclass 141.
 - II. Claims 37-54, drawn to a dielectric waveguide, classified in class 385, subclass 123.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because combination claim 1 lacks the details of the subcombination claim 37. The subcombination has separate utility such as guiding multiple modes in the core.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mark Wefers on 5/31/05 a provisional election was made without traverse to prosecute the invention of group I, claims 1-36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 37-54 are

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withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

6. The drawings are objected to because they contain hand written labels. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-10, 15-18, 20-22 and 24-36 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 060085 to Katsuyama.

As to claims 1-2, 16-18, 27-28, Katsuyama discloses in page 11, line 23 to page 12, line 4, a waveguide comprising:

- A first portion extending along a waveguide axis comprising a first chalcogenide glass; and
- A second portion extending along the waveguide axis comprising a second chalcogenide glass different from the first (the composition is changed radially as the glass is passed longitudinally).

As to claims 3, 5, 6, 8, and 9, the elements claimed are disclosed.

As to claim 10, the core is hollow.

As to claim 15, the loss coefficient is less than 2dB/m at a wavelength of 10.6 microns (page 14, lines 21-22).

As to claims 30-31, the electromagnetic energy falls within the values as claimed.

As to claim 32, a CO₂ laser is disclosed and it is inherent that such a laser would operate in the 100W range (page 2, line 12).

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As to claims 33-34, a CO₂ laser is disclosed (page 15, line 21).

As to claims 21-22, the diameters are 150 microns (page 14, lines 16-17).

As to claims 24-26, and 35-36, the structure disclosed by Katsuyama is that of a Bragg fiber as it comprises a confinement region including multiple layers of different composition.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 11-14, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katsuyama as applied to claim 1 above.

Katsuyama discloses an chalcogenide optical fiber with differing refractive indices, cross sectional dimensions and wavelengths, but fails to explicitly disclose the specific refractive index of greater than/less than 2.7, a glass transition temperature above/below 180 degrees or the cross sectional dimension of 200 microns.

It is respectfully noted that Katsuyama discloses an equation that can calculate specific values of refractive indices and does not specifically limit the refractive index values. It is further noted that glass transition temperature modification is commonly used in the art and changed by simple doping or addition of elements.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the values as claimed, since it has been held that where the general

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conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (MPEP 2131.03 III).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. United States Patent Application Publication 2003/0044158 to King et al. for an optical fiber having multiple layers of differing chalcogenide glass.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Wong whose telephone number is 571-272-2363. The examiner can normally be reached on Monday through Friday, 830AM - 430PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank Font can be reached on 571-272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EW



Frank G. Font
Supervisory Patent Examiner
Technology Center 2800